

House Study Bill 572 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to recording custodial interrogations in a
2 criminal or juvenile case.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **823.1 Definitions.**

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Custodial interrogation*" means questioning or other
5 conduct by a law enforcement officer which is reasonably likely
6 to elicit an incriminating response from an individual and
7 occurs when reasonable individuals in the same circumstances
8 would consider themselves in custody.

9 2. "*Electronic recording*" means an audio and video
10 recording that accurately records a custodial interrogation.
11 "Record electronically" and "recorded electronically" have a
12 corresponding meaning.

13 3. "*Law enforcement agency*" means a governmental entity
14 or other entity authorized by a governmental entity or state
15 law to enforce criminal laws or investigate suspected criminal
16 activity. The term does not include a law enforcement officer.

17 4. "*Law enforcement officer*" means an individual employed
18 by a law enforcement agency whose responsibilities include
19 enforcing criminal laws or investigating suspected criminal
20 activity, including but not limited to a peace officer as
21 defined in section 801.4 and a reserve officer as defined in
22 section 80D.2.

23 5. "*Place of detention*" means a fixed location under the
24 control of a law enforcement agency where individuals are
25 questioned about alleged crimes or delinquent acts. The term
26 includes a jail, police or sheriff's station, holding cell, and
27 correctional or detention facility.

28 6. "*State*" means a state of the United States, the District
29 of Columbia, Puerto Rico, the United States Virgin Islands, or
30 any territory or insular possession subject to the jurisdiction
31 of the United States.

32 7. "*Statement*" means a communication whether oral, written,
33 electronic, or nonverbal.

34 Sec. 2. NEW SECTION. **823.2 Electronic recording**
35 requirement.

1 1. Except as provided in this section and sections
2 823.4 through 823.9, a custodial interrogation at a place
3 of detention, including the giving of any required warning,
4 advice of the rights of the individual being questioned, and
5 the waiver of any rights by the individual, shall be recorded
6 electronically in its entirety means if the interrogation
7 relates to any crime or delinquent act.

8 2. If subsection 1 applies and a law enforcement officer
9 conducts a custodial interrogation without electronically
10 recording the interrogation in its entirety, the officer
11 shall prepare a written or electronic report explaining the
12 reason for not complying with this section and summarizing
13 the custodial interrogation process and the individual's
14 statements.

15 3. A law enforcement officer shall prepare the report
16 required by subsection 2 as soon as practicable after
17 completing the custodial interrogation.

18 4. This section does not apply to a spontaneous statement
19 made outside the course of a custodial interrogation or a
20 statement made in response to a question asked routinely during
21 the processing of an individual following an arrest.

22 Sec. 3. NEW SECTION. **823.3 Notice and consent not required.**

23 A law enforcement officer conducting a custodial
24 interrogation is not required to obtain consent to electronic
25 recording from the individual being interrogated or to
26 inform the individual that an electronic recording is being
27 made of the interrogation. This chapter does not permit
28 a law enforcement officer or a law enforcement agency to
29 record a private communication between an individual and the
30 individual's lawyer.

31 Sec. 4. NEW SECTION. **823.4 Feasibility of recording —**
32 **exception.**

33 A custodial interrogation is not required to be recorded
34 electronically pursuant to section 823.2 if the recording is
35 not reasonably feasible under the circumstances. The law

1 enforcement officer conducting the custodial interrogation
2 shall record electronically an explanation of the exigent
3 circumstances before conducting the custodial interrogation,
4 if feasible, or as soon as practicable after the custodial
5 interrogation is completed.

6 Sec. 5. NEW SECTION. **823.5 Refusal to be electronically**
7 **recorded — exception.**

8 1. A custodial interrogation is not required to be recorded
9 electronically pursuant to section 823.2 if the individual
10 to be interrogated indicates that the individual will not
11 participate in the interrogation if the interrogation is
12 recorded electronically. If feasible, the agreement to
13 participate without recording must be recorded electronically.

14 2. If, during a custodial interrogation that applies under
15 section 823.2, the individual being interrogated indicates that
16 the individual will not participate in further interrogation
17 unless electronic recording ceases, the remainder of the
18 custodial interrogation is not required to be recorded
19 electronically. If feasible, the individual's agreement
20 to participate without further recording must be recorded
21 electronically.

22 3. A law enforcement officer, with intent to avoid the
23 requirement of electronic recording in section 823.2, shall
24 not encourage an individual to request that a recording not be
25 made.

26 Sec. 6. NEW SECTION. **823.6 Interrogation conducted by other**
27 **jurisdiction — exception.**

28 If a custodial interrogation occurs in another state
29 in compliance with that state's law or is conducted by a
30 federal law enforcement agency in compliance with federal law,
31 the custodial interrogation is not required to be recorded
32 electronically unless the custodial interrogation is conducted
33 on behalf of an Iowa law enforcement agency with the specific
34 intent to avoid the requirement of electronic recording in
35 section 823.2.

1 Sec. 7. NEW SECTION. **823.7 Belief — exception.**

2 1. A custodial interrogation is not required to be
3 recorded electronically pursuant to section 823.2 if the
4 custodial interrogation occurs when no law enforcement officer
5 conducting the custodial interrogation has knowledge of facts
6 and circumstances that would lead a law enforcement officer
7 reasonably to believe that the individual being interrogated
8 may have committed an act which requires that a custodial
9 interrogation be recorded electronically under section 823.2.

10 2. If, during such a custodial interrogation, the
11 individual being interrogated reveals facts and circumstances
12 giving a law enforcement officer conducting the custodial
13 interrogation reason to believe that an act has been
14 committed which requires that a custodial interrogation
15 be recorded electronically under section 823.2, continued
16 custodial interrogation concerning that act must be recorded
17 electronically, if feasible.

18 Sec. 8. NEW SECTION. **823.8 Safety — exception.**

19 A custodial interrogation is not required to be recorded
20 electronically pursuant to section 823.2 if a law enforcement
21 officer conducting the custodial interrogation or the officer's
22 superior reasonably believes that electronic recording
23 would disclose the identity of a confidential informant
24 or jeopardize the safety of a law enforcement officer, the
25 individual being interrogated, or another individual. If
26 feasible and consistent with the safety of a confidential
27 informant, an explanation of the basis for the belief that
28 electronic recording would disclose the informant's identity
29 must be recorded electronically at the time of the custodial
30 interrogation. If contemporaneous recording of the basis for
31 the belief is not feasible, the recording must be made as soon
32 as practicable after the custodial interrogation is completed.

33 Sec. 9. NEW SECTION. **823.9 Equipment malfunction —**
34 **exception.**

35 All or part of a custodial interrogation is not required to

1 be recorded electronically pursuant to section 823.2 to the
2 extent that recording is not feasible because the available
3 electronic recording equipment fails, despite reasonable
4 maintenance of the equipment, and timely repair or replacement
5 is not feasible.

6 Sec. 10. NEW SECTION. **823.10 Burden of proof.**

7 If the prosecution relies on an exception described in
8 sections 823.4 through 823.9 to justify a failure to record
9 electronically a custodial interrogation, the prosecution must
10 prove by a preponderance of the evidence that the exception
11 applies.

12 Sec. 11. NEW SECTION. **823.11 Notice of intent to introduce**
13 **unrecorded statement.**

14 If the prosecution intends to introduce in its case in chief
15 a statement made during a custodial interrogation which was
16 not recorded electronically and section 823.2 applies to that
17 statement, the prosecution, not later than the time specified
18 by rule of criminal procedure 2.11(4), Iowa court rules, shall
19 serve the defendant with written notice of that intent and of
20 any exception on which the prosecution intends to rely.

21 Sec. 12. NEW SECTION. **823.12 Procedural remedies.**

22 1. Unless the court finds that an exception in sections
23 823.4 through 823.9 applies, the court shall consider the
24 failure to record electronically all or part of a custodial
25 interrogation in compliance with section 823.2 as a factor
26 in determining whether a statement made during the custodial
27 interrogation is admissible, including whether it was
28 voluntarily made.

29 2. If the court admits into evidence a statement made during
30 a custodial interrogation that was not recorded electronically
31 in compliance with section 823.2, the court, on request of the
32 defendant, shall give a cautionary instruction to the jury,
33 unless such an instruction would be confusing or not beneficial
34 to the jury.

35 Sec. 13. NEW SECTION. **823.13 Handling and preserving**

1 **electronic recording — spoliation.**

2 1. Each law enforcement agency in this state shall establish
3 and enforce procedures to ensure that the electronic recording
4 of all or part of a custodial interrogation is identifiable,
5 accessible, and preserved for a period of three years after
6 the date of the limitation for the commencement of a criminal
7 action as set forth in chapter 802.

8 2. This chapter does not create a cause of action for
9 damages or a presumption of spoliation in the event evidence
10 is no longer available.

11 Sec. 14. NEW SECTION. 823.14 **Rules relating to electronic**
12 **recording.**

13 1. Each law enforcement agency that is a governmental entity
14 of this state shall adopt and enforce rules to administer this
15 chapter.

16 2. The rules adopted under subsection 1 shall address the
17 following:

18 a. The manner in which an electronic recording is made.

19 b. The collection and supervisory review of an electronic
20 recording.

21 c. Supervisory responsibilities imposed on individuals
22 in specific positions in order to ensure adequate staffing,
23 education, training, material resources, and a chain of command
24 to promote internal accountability.

25 d. A process that details when noncompliance with procedures
26 occurs.

27 e. The imposition of administrative sanctions for a failure
28 to comply with procedures that is not justified.

29 f. A process for monitoring the chain of custody of an
30 electronic recording.

31 3. The rules adopted under subsection 2, paragraph "a", for
32 video recordings must contain standards for the angle, focus,
33 and field of vision of a recording device which reasonably
34 promote accurate recording of a custodial interrogation at a
35 place of detention and reliable assessment of its accuracy and

1 completeness.

2 Sec. 15. NEW SECTION. 823.15 Self-authentication.

1. In any pretrial or posttrial proceeding, an electronic recording of a custodial interrogation is self-authenticating if it is accompanied by a certificate of authenticity sworn under oath or affirmation by an appropriate law enforcement officer.

8 2. This chapter does not limit the right of an individual
9 to challenge the authenticity of an electronic recording of a
10 custodial interrogation under law of this state other than this
11 chapter.

12 Sec. 16. NEW SECTION. 823.16 Right to electronic recording
13 or transcript.

14 1. This chapter does not create a right of an individual
15 to require a custodial interrogation to be recorded
16 electronically.

17 2. This chapter does not require preparation of a transcript
18 of an electronic recording of a custodial interrogation.

19 Sec. 17. NEW SECTION. 823.17 Relation to Electronic
20 Signatures in Global and National Commerce Act.

21 This chapter modifies, limits, and supersedes the federal
22 Electronic Signatures in Global and National Commerce Act, 15
23 U.S.C. §7001 et seq., but does not modify, limit, or supersede
24 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
25 electronic delivery of any of the notices described in section
26 103(b) of that Act, 15 U.S.C. §7003(b).

27 Sec. 18. IMPLEMENTATION OF ACT. Section 25B.2, subsection
28 3, shall not apply to this Act.

| 29 | EXPLANATION |
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30 The inclusion of this explanation does not constitute agreement with
31 the explanation's substance by the members of the general assembly.

32 This bill relates to electronically recording a custodial
33 interrogation in a criminal or juvenile case.

34 Under the bill, a custodial interrogation at a place of
35 detention, including the giving of any required warning,

1 advice of the rights of the individual being questioned, and
2 the waiver of any rights by the individual, must be recorded
3 electronically in its entirety by both audio and video means if
4 the interrogation relates to any crime or delinquent act.

5 The bill defines "custodial interrogation" to mean
6 questioning or other conduct by a law enforcement officer which
7 is reasonably likely to elicit an incriminating response from
8 an individual and occurs when reasonable individuals in the
9 same circumstances would consider themselves in custody.

10 The bill defines "place of detention" to mean a fixed
11 location under the control of a law enforcement agency where
12 individuals are questioned about alleged crimes or delinquent
13 acts. The term includes a jail, police or sheriff's station,
14 holding cell, and correctional or detention facility.

15 The bill does not require a law enforcement officer to
16 obtain consent or inform the person being interrogated that the
17 interrogation is being electronically recorded.

18 The bill does not apply to a spontaneous statement made
19 outside the course of the custodial interrogation or a
20 statement made in response to a question asked routinely during
21 the processing of the arrest of an individual.

22 The requirements of the bill also do not apply to
23 the following situations: the electronic recording is
24 not reasonably feasible under the circumstances, the
25 individual refuses to participate in the interrogation
26 if the interrogation is being recorded, the interrogation
27 occurs in another jurisdiction in compliance with the other
28 jurisdiction's laws or by federal law enforcement in compliance
29 with federal law, the law enforcement officer has no knowledge
30 of the facts that would lead the officer to reasonably believe
31 that the individual being interrogated committed an act which
32 would require the interrogation to be electronically recorded,
33 the law enforcement officer conducting the interrogation
34 reasonably believes the electronic recording would disclose
35 the identity of a confidential informant or jeopardize the

1 safety of an officer or another individual, or the electronic
2 recording equipment fails.

3 If feasible under the circumstances, the bill requires the
4 reason for not electronically recording an interrogation to be
5 contemporaneously electronically recorded.

6 The bill prohibits a law enforcement officer from
7 encouraging an individual to request an interrogation not be
8 electronically recorded.

9 If the prosecution relies on an exception to not
10 electronically record an interrogation, the bill specifies that
11 the burden is on the prosecution to prove by a preponderance of
12 the evidence that an exception does apply.

13 The bill requires the prosecution to provide written notice
14 to a defendant of the intent to rely upon a statement made in a
15 custodial interrogation which was not electronically recorded
16 within 40 days of arraignment.

17 The bill specifies that the court shall consider the
18 failure to electronically record all or part of a custodial
19 interrogation, unless an exception applies, as a factor in
20 determining whether a statement made during the interrogation
21 is admissible, including whether the statement was voluntarily
22 made.

23 The bill requires each law enforcement agency to establish
24 and enforce procedures to ensure that the electronic recording
25 is identifiable, accessible, and preserved for a period
26 of three years after the date of the limitation for the
27 commencement of a criminal action as set forth in Code chapter
28 802.

29 The bill requires each law enforcement agency to establish
30 rules relating to the following: the manner in which an
31 electronic recording is made including the angle and focus
32 of the camera, supervisory responsibilities, a process
33 that details when noncompliance with procedures occurs, the
34 imposition of administrative sanctions for a failure to comply
35 with the procedures, and a process for monitoring the chain of

1 custody of an electronic recording.

2 The bill does not create a right to require a custodial
3 interrogation to be recorded electronically or require a
4 transcript of electronically recorded interrogation to be
5 prepared.

6 The bill may include a state mandate as defined in Code
7 section 25B.3. The bill makes inapplicable Code section 25B.2,
8 subsection 3, which would relieve a political subdivision from
9 complying with a state mandate if funding for the cost of
10 the state mandate is not provided or specified. Therefore,
11 political subdivisions are required to comply with any state
12 mandate included in the bill.